

LOG OF MEETING

SUBJECT: Meeting on Interpretation of Novelty Lighter Definition.

DATE OF MEETING: 10-11-95

JUN 23 1997

PLACE: CPSC Headquarters, Room 715

LOG ENTRY SOURCE: Michael T. Bogumill, CRM

COMMISSION REPRESENTATIVES:

See the attached attendance list

NON-COMMISSION REPRESENTATIVE:

See the attached attendance list

SUMMARY OF MEETING

This meeting was held at the request of David H. Baker, General Counsel, Lighter Association, Inc., who requested the meeting by letter dated September 29, 1995, to discuss issues relating to the Commission staff's interpretation of the definition of "novelty lighters" pursuant to the Safety Standard for Cigarette Lighters at 16 C.F.R. § 1210.2(d).

The meeting was called to order by David Schmeltzer, Assistant Executive Director, Office of Compliance (EXC), followed by introductions of those present. After introductory remarks, Mr. Schmeltzer passed the meeting over to David Baker for presentation of the issues the Association wanted to present (see the attached Points in Support of Clarification of Novelty Lighter Definition for the Association's agenda). Mr. Baker and members of the Lighter Association explained their position on novelty lighters to the staff, and a discussion of the history and development of the novelty lighter definition in the standard ensued.

Attached is a copy of the novelty lighter definition as it appears in the standard at 16 C.F.R. § 1210.2(d), and pages from the *Federal Register* (58 FR 37568, 37569, & 37577) where the rationale for the final definition is discussed.

Lighter Association Meeting

| <u>Name</u> | <u>Organization</u> | <u>Phone Number</u> |
|---------------------------|-----------------------|--|
| 1. Michael Bogamill | CPSC/CRM | 301-504-0400 Ext. 1368 |
| 2. MICHAEL A. SCHULER | Lighter Assoc / ZIPPO | (814) 368-2700 |
| 3. LeRoy L. Metz | " | (412) 765-1600 |
| 4. David Baker | Lighter Assoc. | (202) 457-5925 |
| 5. WALTER FONTAINE | COLIBRI | 401-943-2100 |
| 6. Barbara Jacobsen | CPSC/EPHS | (301) 504-0477 x 1206 |
| 7. DALE RAY | CPSC/EC | 301. 504. 0962 |
| 8. Eleanor Perry | CPSC/ES | 301-504-0494 x 1314 |
| 9. Robert Roth | CPSC/CE | 301-504-0400 x 1375 |
| 10. Dan Schulp | CPSC CE | 301 504 0621 x ²³³⁷ 1375 |
| 11. Eric Stone | CPSC/CAL | 301 504-0626 x 1330 |
| 12. Christopher R. Barton | PSL | 703- |
| 1. Hollis Emell | CPSC/OGC | 301 504-0980 x 2217 |
| 14. KATE SEDNEY | CPSC/ESHF | 301-504-0468 x 1282 |
| 15. George W. Rutherford | CPSC/ESHF | 301-504-0468 x 1278 |
| 14. John Wheeler | BNA | 202 452 4413 |

(d) *Novelty lighter* means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

temporarily, due to the relative of incorporating child-features into these products. A number of pushbutton butane lighters, including some premium models, may be discontinued if the cost is judged to be too high and the additional expense. The net benefits of a higher-cost rule would be equal to those of the lower-cost rule, the latter will be less beneficial to industry, particularly to exporters.

Liquid-fuel lighters. The Commission considered the alternative of excluding non-luxury liquid-fuel lighters from the scope of the rule by reference to butane fuel in the definition of disposable lighters. Liquid-fuel luxury lighters (such as those produced by Zippo, the only firm that does not import any lighters) would not be covered, up to a low-cost (under \$2.00 in valuation) imported liquid-fuel lighters would be covered. This would prevent low-cost, non-child-resistant liquid-fuel lighters from being excluded for child-resistant, butane lighters after the issuance of a rule. The more expensive liquid-fuel lighters are price-competitive with the inexpensive butane disposables. Liquid-fuel lighters are not particularly attractive as substitutes for butane disposables, due to other, non-price, factors. The liquid fuel refilling process is relatively inconvenient and liquid fuel is unpressurized, tends to evaporate. Thus, unlike butane lighters, liquid-fuel lighters are not sold to consumers without instructions; consumers must purchase fuel and instructions before initial use; liquid-fuel lighters are not sold to consumers in multi-packs; and the operation of liquid-fuel lighters is generally less convenient.

Child-resistant butane lighters. Child-resistant butane lighters are difficult to use, most butane lighters will probably not give up their convenience of butane lighters for models without child-resistant features. Non-child-resistant lighters, some of which may cost \$5.00-6.00, will still be available after the issuance of the rule. Child-resistant disposables will be more expensive in price than any liquid-fuel lighters. A substantial consumer benefit from child-resistant lighters is unlikely, given the convenience of child-resistant lighters as being employed or substituted for butane disposables. Thus, the net safety benefits would be a result of adding low-cost liquid-fuel lighters to the rule's scope.

Adding low-cost liquid-fuel lighters to the scope of the rule would affect up to roughly 1 million such lighters, retailing for up to about \$8.00-9.00 (or with equivalent value as promotional giveaways). It may be particularly difficult to incorporate child-resistant features into these designs; no such features currently exist. Most, if not all, low-cost liquid-fuel models would probably be discontinued, at least temporarily. Liquid-fuel luxury lighters could still be available, but consumer expenditures on liquid-fuel lighters would increase slightly. The annual cost of the rule to consumers would be on the order of \$1-5 million, depending on the extent to which consumers substituted higher-cost liquid-fuel models for discontinued low-cost ones.

The estimated cost of including low-cost liquid-fuel lighters in the scope of the rule is slight; however, the likely benefits are negligible. The estimated annual net benefits of the rule would probably not increase if liquid-fuel lighters were covered, and could decrease slightly.

Novelty lighters. The rule covers novelty lighters depicting or resembling in physical form or function articles recognized as appealing to or intended for use by children under 5, including lighters with entertaining audio or visual effects. This definition has been changed from that in the proposal, which defined novelties as being lighters that resemble any other object in physical form or function. Regardless of whether a lighter meets the definition of novelty lighter in either the proposed or final rule, it is covered if it meets the definition of disposable by virtue of being nonrefillable or a refillable butane lighter under \$2.00 in Customs Valuation or ex-factory price. The Commission considered whether the rule should cover all novelties included in the proposed definition; this would obviate the need to determine which refillable novelty models are appealing to or intended for use by children under 5. It would also cover numerous (possibly over 100) novelty models resembling ostensibly "adult" items, including tobacco-premium lighters in the form of cigarette packs and other articles; many of these are considered to be less appealing to young children.

No deaths in the Commission's child-play fire data are associated with any novelties. The potential safety benefits of the rule might be slightly increased if adult novelties were included, but any such increase would be negligible.

Most novelties included within the scope of the rule will probably be discontinued. Under 500,000 refillable adult novelties above the \$2.00

disposable cost cutoff are estimated to be imported annually. Including these products would effectively increase the cost of the rule to consumers by up to \$1 million, depending on the extent to which such lighters were modified to comply or were discontinued.

The likely impact of including "adult" novelties on the estimated overall yearly net benefits of the rule would probably be negligible. The burden of the rule on small importers, however, could be increased. The final rule's definition covering novelties resembling articles appealing to children will have less potential adverse impact on small firms, while covering those lighters presenting the greatest potential risk.

b. Narrower scope.

Low-cost refillable lighters. The rule's \$2.00 cost cutoff in the definition of disposable lighters could have been lowered in order to reduce the potential economic burden on importers marketing low-cost refillable butane lighters. The Commission also considered whether it should not cover any refillable lighters, since the overall risk of child-play fires associated with refillables generally is low — and could eliminate refillables and their cost cutoff entirely from the definition of disposable lighters.

Price and operating convenience are the major factors influencing consumer purchases of disposable butane lighters. Low-cost refillable butane lighters are included in the scope of the rule because they may be reasonable substitutes for many nonrefillables. These two groups both use the same fuel; they use the same convenient ignition mechanisms; they are often sold in multi-packs; and they are often similarly priced. Price increases among nonrefillables after the imposition of the rule may make inexpensive non-child-resistant refillables even more attractive as potential substitutes. The inclusion in the rule of low-cost butane refillables will also discourage manufacturers from adding refill ports to nonrefillable models (a reportedly simple and inexpensive modification) in order to circumvent the rule.

The \$2.00 cost cutoff for refillable lighters will cover existing models whose retail prices approach those of the most expensive nonrefillables. The highest observed retail price for nonrefillables is \$4.00 (though almost all are under \$3.00); the least expensive butane refillables retail for as little as \$1.00, which is within the price range for nonrefillables. There may be 50 or more refillable models retailing for under \$4.00; these may be considered by some consumers to be reasonable

58 FR 37568

ites for child-resistant
lles. Although some
les retailing for up to \$8.00-9.00
covered by the rule due to price
s in the channels of distribution,
majority of products covered
up to \$6.00 retail.
still 8-10 million butane
les were imported at under \$2.00
oms Valuation in 1992; roughly
lion of these were between \$1.00
00. Thus, if the Commission
l a \$1.00 cutoff, a majority of
t refillable lighters whose retail
re competitive with
lles would be exempt from
e by the rule. If some low-cost
lighters were also exempted
verage, compliance costs would
ced or eliminated for at least 50
(mostly Korean) manufacturers,
S. importers, and numerous
tors of these products. The
reduction in the total cost of the
consumers could be on the order
million. If no refillables were
the annual cost of the rule
decrease by a total of up to \$10-
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potential adverse effect of the
competition among imported
will also be affected by lowering
nating the cutoff. At \$1.00, any
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ctu and importers of costlier
w imply be shifted down
scale. Some disincentive for
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ill probably exist regardless of
ff level. Reducing the cutoff or
ng refillable lighters may
a somewhat greater incentive
gn suppliers to circumvent the
either raising prices above the
vel or, if refillables were not
by modifying nonrefillables
ill ports), since price
tion with child-resistant models
e more readily maintained.
a \$1.00 Customs Valuation/ex-
price cutoff, non-child-resistant
refillable lighters would be
e for as little as \$3.00 retail. If
ables were covered, non-child-
t lighters would be available at
less. The total cost of the rule
ublic would be reduced, partly
cost increases for refillables
e avoided, but mainly because
ers would be more likely to
e such products for child-
non-refillables. Since some
ng bles and virtually all
ng fillables will still be
e at lower prices, however, the
of substitution on total costs to
ers might not be large. Costs to
ers may also be reduced to the
competition from non-child-

resistant lighters exerted downward
pressure on prices of complying models.

The potential effect of lowering or
eliminating the cost cutoff for refillable
lighters on the safety benefits of the
proposed rule also depends largely on
the extent of consumer substitution of
non-child-resistant refillables for child-
resistant models. A low level of
substitution would probably have little
adverse impact. A higher level of
substitution (e.g., a doubling or more of
the market share of low-cost refillables,
which was less than 5 percent in 1992)
would result in a somewhat greater
reduction in potential safety benefits. If
the market share for inexpensive
refillables grew dramatically (e.g., to 20
percent), the benefits of the rule could
be reduced by \$20 million or more.

With non-child-resistant refillable
lighters retailing for as little as \$3.00
after the issuance of a \$1.00-cutoff rule,
some substitution would be likely to
occur. This could reduce the annual net
benefits of the rule slightly — probably
less than \$5 million. An unknown but
much greater reduction in net benefits
might occur if no refillables were
required to be child resistant and
refillables were heavily substituted for
complying nonrefillables. Significant
substitution will be less likely under the
\$2.00 cutoff. Annual net benefits
probably would not increase under any
circumstances if the cost cutoff were
lowered or eliminated, though the
burden of the rule on some small firms
could be reduced. Issuing the rule with
the \$2.00 cost cutoff will nearly
minimize potential substitution without
imposing a substantial economic burden
on small importers, and without
penalizing firms marketing complying
lighters.

Novelty lighters. As noted above, the
scope of the rule with respect to novelty
lighters is narrower in the final rule
than in the proposed rule. The
Commission considered narrowing the
scope further by eliminating the specific
reference to novelties in the description
of the scope of coverage of the rule.

Novelties that are not required by the
rule to be child-resistant will probably
not be. Excluding novelties from the
rule could reduce the economic impact
of the rule on importers of novelties,
and many novelty models facing
discontinuation from the U.S. market
would remain unregulated. However, up
to roughly half of all novelty shipments
would still be covered, since they will
meet the rule's definition of disposable
lighters (i.e., nonrefillable or butane-
refillable under \$2.00 in Customs
Valuation).

Less than 1 million novelties were
imported into the U.S. in 1992. If

novelty lighters were not explicitly
covered by the rule, estimated annual
shipments of roughly 200,000-300,000
butane refillable novelties over \$2.00 in
Customs Valuation (plus a very small
number of liquid-fuel novelties), which
will otherwise have to be modified or
discontinued, would remain unaffected.
Raising or lowering the cost cutoff could
affect this estimate by up to 100,000-
200,000 units. The annual cost of the
rule to consumers could be reduced by
up to \$1-5 million, depending on the
compliance cost otherwise attributable
to the various models affected, and on
the extent of the potential loss to
consumers if such models will
otherwise be discontinued.

The potential safety benefits of the
rule would also be reduced slightly if
novelties were not explicitly covered.
Since the number of products involved
is very small, this potential reduction
would be slight; however, some toy-like
or otherwise appealing novelties would
escape coverage by virtue of being
refillable and above the cost cutoff.

Relying on the general definition of
disposable lighters, including the cost
cutoff, to identify covered novelties
would obviate the need for judgments
about which lighters are novelties and
which are appealing to children. It also,
however, would allow the marketing of
some novelties that appeal to young
children. Many novelty lighters the
CPSC's staff regards as attractive to
children are above the \$2.00 cutoff.

The preliminary regulatory analysis
estimated that \$5-10 million in reduced
benefits, and up to \$5 million in
reduced net benefits, would be
associated with a rule excluding all
novelties. As noted above, however,
many novelties will still be covered as
disposable, even if novelties were not
explicitly subject to the rule. Some
child-play fires could occur if novelties
over \$2.00 in Customs Valuation and
considered appealing to young children
were not required to be child-resistant.
The expected annual net benefits of the
rule could be reduced slightly (probably
by less than \$5 million) if the rule only
applied to disposable lighters, which
include only low-cost or nonrefillable
novelties.

2. Performance and Technical Requirements

a. Introduction. The rule incorporates
a test protocol for surrogate lighters
representing each model or type of
lighter subject to the rule. The rule
requires such surrogates to be resistant
to operation by 85 percent of tested
children under specific test conditions.
The rule also requires qualification tests
for subject lighters be conducted in the

58 FR 37569

associated with any luxury lighters, it is unlikely the benefits of the rule would be greatly increased. Even if potential additional benefits were generously estimated at up to \$10 million, expected net benefits would not significantly increase, and could decrease slightly. In addition, a \$4.00 cutoff would have significant disruptive effects on the sales of small importers of moderately-priced refillable lighters, and on the availability of such lighters to consumers.

Issuing the rule with the proposed cost cutoff of \$2.00 in Customs Valuation or ex-factory price would minimize potential consumer substitution of non-child-resistant lighters for complying models, without imposing a substantial economic burden on small businesses and without penalizing firms marketing complying lighters. The estimated annual net benefits of the rule would probably also be maximized. The Commission believes the proposed \$2.00 cutoff provides the most reasonable balance of safety and commercial interests.

c. Liquid-fuel lighters. One commenter stated that inexpensive liquid-fuel lighters should be covered by the rule to prevent low-cost non-child-resistant liquid-fuel models from being substituted for complying lighters.

The Commission does not consider liquid-fuel lighters to be close substitutes for nonrefillable disposable lighters. Liquid-fuel lighters may be viewed as inconvenient to refill, do not use pressurized butane fuel, do not contain fuel when purchased, may have different, less convenient ignition mechanisms, are not sold in multi-packs, and, in general, are more expensive. Unless child-resistant butane lighters are very difficult to use, it is unlikely consumers would give up the convenience of butane lighters for non-child-resistant liquid-fuel lighters. The Commission believes that manufacturers in the highly-competitive lighter market will assure their child-resistant lighters are convenient to use.

The additional safety benefits for a rule including inexpensive liquid-fuel lighters would be negligible. The Commission is aware of one child-play fire death and one injury over the past 10 years involving a liquid-fuel lighter.

The cost of the rule to consumers would increase by up to approximately \$1.5 million; many such lighters would probably be discontinued if required to be child-resistant. Including inexpensive liquid-fuel lighters could decrease the estimated annual net benefits of the rule slightly.

d. Definition of novelty lighters. One commenter supported the definition of

novelty lighter in the proposed rule, which is any lighter that resembles any other object in physical form or function. Four commenters asserted that the proposed definition is too broad or too subjective. One of the four recommended a definition that would include lighters with shapes that resemble toys or adult products, such as watches, that are adapted to toy-like uses. This commenter is concerned that regular lighters, if adorned with graphics, might be considered novelty lighters. The other three commenters supported the draft ASTM voluntary standard definition that was submitted to the Commission by the Lighter Association in July 1990. The ASTM novelty definition includes lighters that resemble a product "normally associated with children playing."

Two commenters requested a definition that excludes from the rule those novelty lighters whose Customs Valuation or ex-factory price is \$1.00 or more and suggested that the industry could voluntarily incorporate a manual on-off switch for novelty lighters that are not required to be child resistant.

The Commission's primary intention is to assure that the scope of the rule includes novelty lighters that appeal to children. The Commission agrees that the proposed definition could include some lighters, such as crystal vases, that would not necessarily appeal to young children. Although the Commission did not use the draft voluntary standard definition of novelty lighter in the proposed rule, it did revise the scope of the definition to more closely distinguish the lighters that present higher risks from child-play.

The suggested cost cutoff of \$1.00 for novelty lighters is not appropriate because most novelty lighters, including many considered to be appealing to children, are above \$1.00 in Customs Valuation. The concept of a definition limited to the shape of the lighter is not acceptable because the Commission believes that lighters with appealing logos or graphics also are likely to be played with by children and thus should be considered novelty lighters. In addition, the Commission believes lighters with entertaining audio or visual effects, such as music or flashing lights, also would appeal to children and should be covered. Such lighters may not have modified shapes.

After considering these comments, the Commission developed the following revised definition: Novelty lighter means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or

intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food, or beverages, or that play musical notes or have flashing lights or other entertaining features.

The Commission's staff for many years has provided guidance on age appropriateness of toys and children's products in support of regulations under the Federal Hazardous Substances Act. The staff is prepared to make similar interpretations about the appeal of novelty lighters to children under 5.

Any reduction in potential safety benefits of a rule with the revised definition would be slight. The Commission is aware of no deaths or injuries involving novelty lighters that were covered by the proposed rule but that are not included in the revised definition. Lighters in the form of a cigarette pack and a gold brick, which were involved in child-play fire incidents, would have been covered under the proposal but will not, by virtue of their appearance alone, be covered under the revised novelty definition. However, these particular lighters would have been within the scope of the final rule because they are disposable because they either were nonrefillable or were refillable butane and under \$2.00 in Customs Valuation or ex-factory price.

The Commission supports a revised definition largely because the burden on importers, particularly small importers, would be reduced without reducing the expected net benefits of the rule. If finalized, the definition that was proposed might result in the discontinuation of many, if not most, novelty lighters. Although the revised definition might also result in the discontinuation of many novelty lighters, it would allow a continued market for a larger number of novelty lighters.

Excluding some novelty lighters from the scope of the rule may reduce the annual cost of the rule to consumers by up to \$1 million. The impact on annual net benefits would likely be negligible.

The revised definition of novelty lighter is at § 1210.2(d) of the final rule.

4. Test protocol. The rule requires subject lighters to be tested using panels of young children. The lighters are considered child resistant if at least 85 percent of the children are unable to operate them during a 10-minute test period.

a. Acceptance criterion. Three commenters supported the proposed 85 percent acceptance criterion. Two of the

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1010

Lighter



Association Inc.

September 29, 1995

Mr. David Schmeltzer
Associate Executive Director
Office of Compliance
U.S. Consumer Product Safety Commission
4330 East-West Highway
Room 610
Bethesda, Maryland 20814-4408

Mr. Ron Medford
Associate Executive Director
Office of Hazard Identification
& Reduction
U.S. Consumer Product Safety Commission
4330 East-West Highway
Room 702
Bethesda, Maryland 20814-4408

Re: Meeting on Novelty Lighter Interpretation

Dear David and Ron:

On behalf of the Lighter Association, Inc., the trade association of the U.S. lighter industry, I am requesting a meeting to discuss the Commission's interpretation of the current novelty lighter definition. Part 1210.2(d). In particular, the industry is concerned about the interpretation of the term "...depicts (logos, decals, artwork...)", in the first and the second sentences of the definition. We are interested in discussing a change in enforcement policy regarding the definition, or a possible amendment of the definition.

As I discussed with David on September 29, 1995, we would like to meet on Wednesday, October 11 at 9:30 a.m. at your offices. Attendees at the meeting would include Michael A. Schuler, President, Zippo Manufacturing, Bradford, Pennsylvania; Michael P. Reynolds, Group Vice President, Colibri, Providence, Rhode Island; Leroy Metz, Pittsburgh, Pennsylvania, Attorney for Zippo Manufacturing; and myself. We will bring a number of samples of refillable lighters with various types of artwork for consideration at the meeting.

2100 Pennsylvania Avenue, N.W., Suite 400 ■ Washington, D.C. 20037 ■ (202) 457-5925

I thank you in advance for your cooperation in setting up this meeting. I look forward to seeing you both on the 11th.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Baker', written over a large, loopy initial 'D'.

David H. Baker
General Counsel

DHB:jkp

WAS-125157

Points in Support of Clarification
of Novelty Lighter Definition

1. Novelty lighters were an afterthought to the ANPR - added because of concern by then Chairman Scanlon regarding ice cream cone and spaceship lighters.
2. Throughout the historical development of definition focus was always on physical form or function of lighter, i.e. ice cream cone, spaceship, car, motorcycle, wristwatch type lighter.
3. Examples of lighters at Briefing Conference on proposed rule included pink cadillac, gun and spaceship lighters. Regular refillable lighters were also on display and distinguished from novelty lighters by then Chairman Jones-Smith.
4. Findings in final rule specifically referenced novelty lighters as follows:

16 C.F.R. Part 1210.5: Findings

- (b) A small proportion of refillables is comprised of pocket liquid fuel models; still smaller proportions are represented by table lighters and by "novelty" lighters, that is, those having the physical appearance of other specific objects.

Thus, the Commission's own regulation is consistent with industry's interpretation of the novelty definition.

5. CPSC/Customs video with David Thome explained novelty lighters in same manner and showed a lighter with flashing lights, and lighters shaped like a gun, a truck, a motorcycle and a pink cadillac.
6. CPSC Compliance seized, then released, refillable lighter with Joe Camel artwork.
7. Association proposes clarification of existing interpretation of lighter rule as follows:

The term "depicts" in the novelty lighter definition means represents or resembles another object in physical form or function. Artwork on the face of a regularly shaped mass market lighter does not transform a refillable lighter into a novelty lighter.

NOVELTY LIGHTERS

2. Definition of Novelty Lighter

The definition in the proposed rule of a "novelty" lighter is rather broad and subjective. The proposed language provides that a novelty lighter is one "that resemble any other object in physical form or function, e.g., a car, a gun, a space ship, a watch, a pack of cigarettes, an ice cream cone, etc." We believe that the issue with novelty lighters lies with the fact that a novelty lighter attempts to imitate another product. Most often, this imitation requires a change in the shape of a lighter from what is normally sold as a regular lighter at retail. Our concern is that if a lighter that would be normally sold in an undecorated state, is adorned with some graphics or emblems that this might lead it to be considered a novelty lighter. Moreover, such graphics or emblems could be applied to the lighter after it had been sold by the manufacturer and therefore it would be out of the manufacturer's control. For this reason, Zippo suggests that the definition of novelty lighters be altered as follows.

"A novelty lighter is a lighter which is differentiated in shape from lighters commonly sold to function as a source of an open flame. The purpose of the change in the shape of the product is to give it more market appeal rather than improved functionality. The change of shape often makes these lighters resemble objects other than lighters. These shapes often resemble toys (such as, ice cream cones, spaceships, a car, etc.) or adult products adapted to toy-like uses (such as, watches, toy guns, cameras, etc.)"